SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1442.

G. W. NORTON, PLAINTIFF IN ERROR,

vs.

THE BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

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1 Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Plaintiff,
vs.
THE BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE. } No. 2933.

2 The President of the United States of America to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to summon The Board of Commissioners of the Taxing District of the City of Brownsville, a citizen of the State of Tennessee, if to be found within your district, to appear before the judge of the circuit court of the United States, in the sixth circuit, for the western district of Tennessee, at Memphis, in said district, on the fourth Monday in November next, and then and there to answer G. W. Norton, a citizen of the State of Kentucky, in a plea of assumpsit, to the damage of the said plaintiff (as he says) ten thousand dollars.

Herein fail not, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at said Memphis, this 20th day of May, A. D. 1887, and the 111th of American Independence.

[L. S.] J. B. CLOUGH, *Clerk.*
——, *D. C.*

Know all men by these presents that we, Geo. W. Norton and L. P. Cooper, are held and firmly bound unto said defendant in the sum of two hundred and fifty dollars, but to be void on condition that the said defendant, do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the circuit court of the United States for the western district of Tennessee, at said Memphis, against the said defendant, and also on failure of the said plaintiff to prosecute the said suit with effect, and also on failure of the defendant, if convicted, to pay said costs.

Witness our hands and seals this 20th day of May, A. D. 1887.

G. W. NORTON, [L. S.]
By CRAFT & COOPER *Att'ys.* [L. S.]
L. P. COOPER, *Surety.* [L. S.]

Approved by and acknowledged before me the 20th day of May, A. D. 1887.

J. B. CLOUGH, *Clerk.*

2a *Marshal's Return.*

At Brownsville, Tenn., on 22d day of August, 1887, I served a certified copy of this summons, together with a certified copy of dec-

laration in this cause, personally on H. C. Nolen, president; Joseph Sternberger, secretary, and John R. Head, treasurer, of the taxing district of the city of Brownsville.

T. B. TANEY, *U. S. Marshal,*
By C. S. TALLIAFERRO, *Deputy.*

[Endorsed:] No. 2933. U. S. circuit court, western district Tennessee. G. W. Norton *vs.* The Board of Com'rs of the Taxing District of the City of Brownsville. Summons. Returnable to November term, 1887. Craft & Cooper, attorneys. Returned and filed at Memphis on the 23 day of August, 1887. J. B. Clough, clerk, ——, D. C.

3 *Declaration.*

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Plaintiff,
vs.
THE BOARD OF COMMISSIONERS OF THE TAXING DISTRICT of the City of Brownsville, Tenn.—W. N. Scott, President; Jos. Sternberger, Treasurer; Jno. R. Reed, Sec'ty & Finan. Agent. } No. 2933.

The plaintiff, a resident of Louisville, in and a citizen of the State of Kentucky, sues the defendants, residents and citizens of the State of Tennessee, for ten thousand dollars, for that "the city of Brownsville," a municipal organisation duly organised under the laws of Tennessee on the first day of July, 1870, in pursuance of authority previously granted to it, the said "city of Brownsville," by an act of the General Assembly of the State of Tennessee passed February 8th, 1870, did execute and issue a series of negotiable bonds, running from 1 to 100, for $500.00 each, payable to bearer on the first day of July, 1890, and bearing interest at the rate of eight per cent. per annum, payable semi-annually, said bonds having interest coupons attached for each regular payment of interest, wh- were required to be surrendered on the payment of said interest. Said bonds, with the proper changes for the numbers, were in the following form, to wit:

"No. 1. THE STATE OF TENNESSEE.

4 "Know all men by these presents that the corporation of the City of Brownsville, Tennessee, is indebted to the bearer of this bond in the sum of five hundred dollars, for value received, which the said corporation hereby promises to pay on the first day of July, 1890, at the office or agency of said corporation, in the city of St. Louis, Missouri, with interest thereon from the first day of July, 1870, at the rate of eight per cent. per annum, payable annually, at the said office or agency, on the first day of July of each year, on the presentation and surrender of the annexed coupons as they severally become due. This bond is one of a series consisting

of one hundred bonds for five hundred dollars each, numbering from one to one hundred, inclusive, amounting in the aggregate to fifty thousand dollars and issued by authority of an act of the Legislature of the State of Tennessee passed February 8th, 1870.

"In witness whereof the City of Brownsville has caused these presents to be signed by its mayor and recorder this first day of July, 1870.

"JOHN CLINTON, *Recorder.*
"F. W. TYUS, *Mayor.*"

And the interest coupons annexed to said several bonds were and are numbered from one to twenty, and, making proper changes
5 for numbers and dates of payment, were in the following words and figures, to wit:

"$40. The corporation of the City of Brownsville will pay the bearer forty dollars at the office or agency of said corporation, in the city of Saint Louis, on the first day of July, 1874, for annual interest on bond No. 1.

"4. $40.

"JOHN CHILTON, *Recorder.*"

And for that long before any of said bonds or coupons became due and payable plaintiff became the owner and legal holder of bonds Nos. 5, 7, 27, 35, 41, 44, 48, 49, 55, 57, 58, 60, 62, 82, 83, 84, 85, 86, 90, 91, 95, 96, 97, 98, 99, 100, together with the coupons aforesaid, annexed thereto, having purchased the same for value in due course of trade, and he is now the owner and holder of said bonds and coupons, and the interest on said bonds Nos. 5, 7, 27, and 41, due July 1, 1874, and evidenced by coupons numbered 2 on each of bonds Nos. 5 and 7, and coupons numbered 4 on each of said bonds Nos. 27 and 41, remains due and unpaid, and the interest on said bonds Nos. 27, 35, 41, 44, 48, 49, 55, 57, 58, 60, 62, 82, 83, 84, 85, 86, 90, 91, 95, 96, 97, 98, 99, and 100 for the years 1883, 1885, and 1886, evidenced by the coupons annexed to each one thereof, numbered 13, 14, 15, and 16, remains due and owing to plaintiff, and said coupons so owing and due to plaintiff as aforesaid were duly
6 presented to the maker thereof and payment refused; and for that the defendant, The Board of Commissioners of the Taxing District of the City of Brownsville, Tennessee, is the legal corporate successor of the City of Brownsville, the maker of said bonds and coupons, and has for its officers the persons named in the caption hereof, and is liable for all of the debts, contracts, and obligations of said city of Brownsville, and owes, by the reason of these facts, the plaintiff the amount of the coupons herein shown to be due and unpaid, for which, with interest and costs, plaintiff sues.

CRAFT & COOPER,
Attorneys for Plaintiff.

6*a* [Endorsed:] No. 2933. Circuit court of the United States, western district of Tennessee. G. W. Norton *vs.* Brownsville. Declaration. Filed May 20, 1887. John B. Clough, clerk.

7 *Order of Court.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1886, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 21st day of May, A. D. 1887, in the following cause, to wit:

G. W. NORTON, Plaintiff,
vs.
BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, Defendant. } No. 2933.

Upon motion of the plaintiff in this suit and for satisfactory reasons to the court appearing, it is hereby ordered by the court that this case be, and it is hereby, continued to the next term of this court.

8 *Order of Court.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1887, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 23d day of August, A. D. 1887, in the following cause, to wit:

G. W. NORTON, Plaintiff,
vs.
BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, Defendant. } No. 2933.

Upon motion of plaintiff, for satisfactory reasons to the court appearing, it is hereby ordered by the court that this case be, and it is hereby, continued to the next term of this court.

9 *Pleas of Defendant. Filed January* 14, 1888.

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Plaintiff,
vs.
THE BOARD OF COMMISSIONERS OF TAXING DISTRICT OF CITY OF BROWNSVILLE. } No. 2993.

1. The defendant, for plea to the declaration in this case, says that the corporation of "the city of Brownsville" or "the board of mayor and aldermen of the city of Brownsville" had no authority in law to execute and issue the series of bonds mentioned and described in the plaintiff's declaration, certain coupons of which bonds are therein in said declaration sued on, and that said bonds and coupons so issued and signed by "John Clinton, recorder," and "J. W. Tyas, mayor," as alleged in said declaration, are void, said parties having no power or authority in law to sign, execute, or issue the same.

W. W. RUTLEDGE AND SMITH & COLLIER,
Attorneys for Defendant.

STATE OF TENNESSEE, *Haywood County:*

Personally appeared before me, J. W. Brown, clerk of the county court of said county and State, H. C. Nolen, Jno. R. Head, and William Thomas, commissioners of the taxing district of the city of Brownsville, Tennessee, and made oath that the above plea
10 is true, to the best of their knowledge and belief.

H. C. NOLEN, *President.*
J. R. HEAD, *Secretary.*
WM. THOMAS, *Treasurer.*

Sworn & subscribed before me the 13th day of January, 1888.
J. W. BROWN, *Clerk, etc.*

2. And for further plea defendant says that the taxing district of the city of Brownsville does not owe the plaintiff anything in the way or manner the plaintiff in declaring hath alleged.

W. W. RUTLEDGE AND SMITH & COLLIER,
Attorneys for Defendant.

And the commissioners, H. C. Nolen, John R. Head, and William Thomas, commissioners of the taxing district of the city of Brownsville, make oath that the above plea is true, to the best of their knowledge, information, and belief.

H. C. NOLEN, *President.*
J. R. HEAD, *Secretary.*
WM. THOMAS, *Treasurer.*

Sworn & subscribed to before me the 13th day of January, 1888.
J. W. BROWN, *Clerk, etc.*

3. And for further plea defendant says that plaintiff's action on the coupons or interest due or maturing July 1, 1874, on bonds Nos. 5, 7, 27, and 41, as sued on and alleged in said declaration, accrued more than six years before the commencement of this suit, and defendant pleads the statute of limitations of six years under the
11 law and statutes of the State of Tennessee as to said coupons.

W. W. RUTLEDGE AND SMITH & COLLIER,
Attorneys for Defendant.

And the said H. C. Nolen, Jno. R. Head, and Wm. Thomas, commissioners of the taxing district of the city of Brownsville, make oath that the above plea is true to the best of their knowledge, information, and belief.

H. C. NOLEN, *President.*
J. R. HEAD, *Secretary.*
WM. THOMAS, *Treasurer.*

Sworn & subscribed to before me the 13th day of January, 1888.
J. W. BROWN, *Clerk.*

I certify that the foregoing pleas constitute a good defence in law, in my opinion, and that I am of counsel for the defendant.
W. W. RUTLEDGE.

12 *Order of Court.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1887, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 26th day of May, A. D. 1888, in the following cause, to wit:

G. W. NORTON, Plaintiff,
vs.
BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, Defendant. } No. 2933.

For satisfactory reasons to the court appearing, it is hereby ordered by the court that this case be, and it is hereby, continued to the next term of this court.

13 *Replication. Filed June* 2, 1888.

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Pl'ff,
vs.
COM'RS, ETC., OF BROWNSVILLE. } No. 2933.

1. Comes the plaintiff, by attorney, and, for replication to the first plea filed by defendants, says that the city of Brownsville did have authority to execute and issue the series of bonds mentioned and described in plaintiff's declaration, certain coupons of which are herein sued on, because plaintiff says that an election was duly held in accordance with law in which the execution and issuance of said bonds were authorized by a constitutional vote of more than three-fourths of the voters, and of this he puts himself on the country.

2. And as to the plea of defendants secondly above pleaded plaintiff, by attorney, says that defendant does owe as in his declaration alleged, and of this he puts himself upon the country.

3. And as to the plea thirdly above pleaded plaintiff says that said plea is not true in fact, and of this he puts himself upon the country.

CRAFT & COOPER,
Attorneys for Plaintiff.

14 *Rejoinder. Filed June* 2, 1888.

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Plaintiff,
vs.
COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, TENN. } No. 2933.

And for rejoinder to said three pleas, in which the plaintiff puts himself upon the country, the defendants do the like.

W. W. RUTLEDGE AND
SMITH & COLLIER,
Att'ys for Defendants.

15 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1888, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 13th day of June, A. D. 1888, in the following cause, to wit:

G. W. NORTON, Plaintiff,
vs.
BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, Defendant. } No. 2933.

In this case, upon suggestion of counsel for both plaintiff and defendant that the amount sued for is less than $5,000.00 and that plaintiff is the owner and holder for value of 24 coupons of $40 each, which matured July 1, 1887, clipped from the series of bonds described in plaintiff's declaration, and at the request of counsel upon both sides, it is ordered that plaintiff be, and he is hereby, allowed to file his amended declaration declaring on said 24 coupons, so that either party may appeal from the final judgment of this court to the Supreme Court of the United States, the amount sued for,
16 including the 24 coupons added by said amended declaration, being more than $5,000.00; and it is further ordered that the plea already filed to the original declaration may stand and be considered as filed also to said amended declaration as now filed, and that any pleading on either side subsequent to such pleas may also stand and be taken as embracing said amended declaration.

Amended Declaration. Filed by Leave of Court, by Agreement of Counsel, on June 13, 1888.

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, a Resident and Citizen of Louisville, Kentucky, Plaintiff,
vs.
THE BOARD OF COMMISSIONERS OF THE TAXING DISTRICT of the City of Brownsville, a Municipal Corporation of the State of Tennessee. } No. 2933.

Plaintiff, a resident and citizen of the State of Kentucky, sues the defendants, residents and citizens of the State of Tennessee, and constituting the board of commissioners of said taxing district of the said city of Brownsville (W. N. Scott being president, Joseph Sternberger, treasurer, and John R. Head secretary and financial agent), a municipal corporation regularly organized under the laws of Tennessee, for the sum of $1,500.00, for that heretofore, to wit, on the
17 first day of July, 1870, the city of Brownsville, also a municipal corporation under the laws of Tennessee, and the predecessor of the said taxing district of the city of Brownsville, by virtue of the power and authority conferred upon it by an act of the General Assembly of the State of Tennessee passed February 8, 1870, as amended by the new constitution, which went into effect May 5, 1870, and after an election regularly held according to law, at which a majority of more than three-fourths of the votes polled were in favor of issuing the bonds hereinafter described, did execute and issue to the Brownsville and Ohio Railroad Company, a corporation under the laws of Tennessee, a series of negotiable bonds, num-

bered from 1 to 100, respectively, and each for $500.00, payable July 1, 1890, at the city of St. Louis, Mo., and all bearing interest from date at 8 per cent. per annum, represented by coupons attached of $40 each, payable to bearer July 1, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, and 1890. Said bonds, with proper changes of number, are in words and figures following:

"Know all men by these presents that the corporation of the city of Brownsville, Tennessee, is indebted to the bearer of this
18 bond in the sum of five hundred dollars, for value rec'd, which the said corporation hereby promises to pay on the 1st day of July, 1890, at the office or agency of the said corporation, in the city of St. Louis, Missouri, with interest thereon from the 1st day of July, 1870, at the rate of 8 per cent. per annum, payable annually at the said office or agency on the first day of July of each year on the presentment and surrender of the annexed coupons as they severally become due. This bond is one of a series, consisting of one hundred bonds, for five hundred dollars each, numbered from 1 to 100, inclusive, amounting in the aggregate to $50,000.00, and issued by authority of an act of the Legislature of the State of Tennessee passed February 8th, 1870.

"In witness whereof the city of Brownsville has caused these presents to be signed by its mayor and recorder this first day of July, 1870.

"JOHN CLINTON, *Recorder.*
"T. W. TYUS, *Mayor.*"

The interest coupons attached to said bonds, making proper changes for number, are in words and figures following:

"The corporation of the city of Brownsville will pay to bearer forty dollars at the office or agency of said corporation, in the city of St. Louis, on the first day of July, 1887, for annual interest on bond No. 48.

$40. "JOHN CLINTON, *Recorder.*"

19 Plaintiff avers that long before the coupons on said bonds which matured July 1, 1887, became due he in due course of trade and for value became the holder and owner of the following of said coupons due July 1, 1887, to wit: 24 coupons of $40 each, due July 1, 1887; No. 17 cut from bonds Nos. 35, 41, 44, 62, 82, 83, 84, 85, 86, 27, 48, 49, 55, 58, 60, 67, 90, 91, 95, 96, 97, 98, 99, and 100; that he caused the same to be presented to the city of Brownsville for payment at maturity, and payment was refused, and to the defendants, when the taxing district of the city of Brownsville was organized, who also refused payment, and that no part of the same has been paid. Therefore plaintiff sues the defendants for the principal and interest on said 24 coupons and all costs and damages.

CRAFT & COOPER,
Attorneys for Plaintiff.

20 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee:

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof begun and held for its May term, A. D. 1888, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 14th day of June, A. D. 1888, in the following cause, to wit:

G. W. NORTON, Plaintiff,
vs.
THE BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, Defendant. } No. 2933.

Came the parties, by their attorneys, and also came a jury of good and lawful men, to wit, Jno. Crawford, Joe Forsythe, Oscar Walker, John R. Shrayer, James Tarpley, J. W. Voegeli, Levi Perkins, J. A. Matthews, S. J. Alexander, Geo. Johnson, M. H. Metts, and P. D. Lacey, who, being empanneled, sworn, and charged well and truly to try the issue joined between the plaintiff and the defendants, upon their oaths do say that they find for the defendants and against the plaintiff. It is, therefore, adjudged by the court that the defendants recover of the plaintiff and L. P. Cooper, his security, costs in this behalf expended, for which execution may issue; and
21 thereupon came the plaintiff, by his attorneys, and moved the court in arrest of judgment herein, which motion was overruled; to which ruling the plaintiff then and there excepted; and thereupon the plaintiff moved the court for a new trial, which motion was overruled; to which ruling the plaintiff again excepted and tendered his bill of exceptions and prayed that the same be signed, sealed, and made a part of the record in this case, which was accordingly done; and now comes the plaintiff and prays for a writ of error to the Supreme Court of the United States, at Washington city, which is granted upon plaintiff's entering into bond for the costs thereof before the clerk of this court, with sufficient security, to be approved by the court, which is accordingly done.

Bill of Exceptions. Filed June 14, 1888.

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Plaintiff,
vs.
BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, Defendant. } No. 2933.

On the trial of this cause the agreement of facts signed by the attorneys for the plaintiff and the defendants and filed April 8, 1888, was read to the jury in words and figures following:

22 *Agreed Statement of Facts in this Suit. Filed Ap-il, 8, 1888.*

Circuit Court of the United States, Western District of Tennessee.

G. W. NORTON, Plaintiff,
vs.
THE BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE. } No. 2933.

To avoid the trouble and expense of making proof in the above-stated cause the counsel of plaintiff and defendant make the following agreement of facts: This agreement is considered as made in this case and in the case of Loagan, adm'r, against the same defendant in this court (No. 2888), but it is further agreed that the two causes shall be heard together by the court, and the agreement is filed in both cases. Either party shall be at liberty to introduce other proof at the hearing if desired.

CRAFT & COOPER, *For Plaintiff.*
W. W. RUTLEDGE, *For Defendant.*
SMITH & COLLIER, *For Defendant.*

Facts.

The city of Brownsville was incorporated by act of the General Assembly of Tennessee passed on February 24, 1870.

The records of the board of mayor and aldermen show the following proceedings had May 12, 1870:

23 "BROWNSVILLE, TENNESSEE, *May* 12, 1870.

A call-meeting of the board of mayor and aldermen met at the mayor's office. Members being all present, the board was called to order. Reading the minutes of the last meeting was dispensed with. Upon application of J. D. Smith, president of Brownsville & Ohio Railroad Company, and in pursuance of authority in us vested by the act of General Assembly of State of Tennessee passed February 8, A. D. 1870, the board of mayor & aldermen of the city of Brownsville hereby order and direct that an election be held in our said city on Saturday, the 11th day of June next, at which election the qualified voters of our said city will vote upon the proposition to issue the bonds of the corporation to be subscribed as stock in aid of Brownsville and Ohio railroad, and in accordance with the provisions of said act said bonds to have twenty years to run and be payable in city of St. Louis, Missouri, and bear interest at the rate of eight per cent. per annum, said interest payable annually in said city, and said bonds to be issued to amount to the sum of fifty thousand dollars and be known as Brownsville railroad bonds. Said election is to be advertised in the Brownsville Bee, the county newspaper of Haywood county, for twenty days before said election. Said bonds are to be issued to and taken by the Brownsville and
24 Ohio Railroad Company in lieu of the sum of fifty thousand dollars heretofore voted and subscribed by this corporation to

the said company in pursuance of section 6 of said act of General Assembly of State of Tennessee of February 8, 1870. In voting at said election those voters who are in favor of the issuance of said bonds in lieu of said subscription shall have written or printed upon their ballots 'bonds,' and those who are opposed to the issuance of said bonds shall have written or printed on their ballots 'no bonds.' It is ordered that the sheriff of Haywood county give notice by advertisement in the Brownsville Bee for twenty days of the time, place, and purpose of holding said election, and shall open and hold the same at the usual voting place or places in the city of Brownsville on Saturday, June 11, 1870, and shall, as soon thereafter as practicable, certify the result of said election to this board. Full power and authority is hereby given him to appoint judges and other officers of said election, and to do all things else necessary and proper to carry into effect this order."

On the 13th day of June, 1870, the sheriff of Haywood county, Tennessee, certified to the mayor and aldermen of the city of Brownsville that he did hold the election thus ordered in conformity to the terms of the order on the 11th of June, 1870, and that at said
25 election one hundred and thirty-nine votes were polled, and the result was one hundred and thirty-nine votes were cast for "bonds" and none for "no bonds."

And on the said 13th day of June, 1870, the said mayor and aldermen of the city of Brownsville did ordain as follows:

"On motion, the following ordinance was adopted, to wit: Whereas it appears from the certificate of Jno. L. Sherman, sheriff of Haywood county, that in pursuance of an ordinance of this board passed 12th of May, 1870, that he did, on the 11th day of June, 1870, open and hold an election within the city of Brownsville upon the proposition to issue fifty thousand dollars corporation bonds running twenty years, bearing interest from date at eight per cent. per annum, payable in the city of St. Louis, Missouri, said bonds to be known as the Brownsville railroad bonds, and to be issued in aid of the construction of the Brownsville and Ohio railroad, and that at said election one hundred and thirty-nine votes were cast in favor of said bonds and none against, it is therefore ordained by the board of mayor and aldermen of the city of Brownsville that the mayor, T. W. Tyas, subscribe to the Brownsville and Ohio Railroad Company the sum of fifty thousand dollars as stock, and that in
26 payment of said subscription he sign and issue to said Brownsville and Ohio Railroad Company fifty thousand dollars corporation bonds, said bonds bearing interest from date at the rate of eight per cent. per annum, payable in the city of St. Louis, Missouri, twenty years from date, said interest to be paid annually, said bonds to be issued in aid of the construction of said Brownsville & Ohio railroad and to be known as the Brownsville railroad bonds."

On the first day of July, 1870, fifty thousand dollars of the bonds of the city of Brownsville were issued under and in pursuance of the foregoing proceedings, payable July 1, 1890, and the same were by said city of Brownsville paid and delivered to the Brownsville and

Ohio Railroad Company in payment of a subscription theretofore made by said city of Brownsville for fifty thousand dollars of the capital stock of said railroad company, and said stock so paid for was delivered by said railroad company to said city of Brownsville and has ever since been held and owned by said city.

The following is a correct copy of one the said fifty thousand dollars of bonds and the others are like unto it:

"$500. UNITED STATES OF AMERICA. $500.

"CITY OF BROWNSVILLE, *State of Tennessee.*

"*Brownsville Railroad Bond.*

27 "Interest at eight per cent., payable annually.

"Know all men by these presents that the corporation of the City of Brownsville, Tennessee, is indebted to the bearer of this bond in the sum of five hundred dollars, for value received, which the said corporation hereby promises to pay on the first day of July, in the year one thousand eight hundred and ninety, at the office or agency of said corporation, in the city of St. Louis, Missouri, with interest thereon from the first day of July, eighteen hundred and seventy, at the rate of (8) eight per centum per annum, payable annually, at the said office or agency, on the first day of July of each year, on the presentation and surrender of the annexed coupons as they severally become due. This bond is one of a series of one hundred bonds for five hundred dollars each, numbered from one to one hundred, inclusive, amounting in the aggregate to fifty thousand dollars, and issued by authority of an act of the Legislature of the State of Tennessee passed February 8, 1870.

"In witness whereof the City of Brownsville has caused these presents to be signed by its mayor and recorder this the first day of July, 1870.

"T. W. TYUS, *Mayor.*
"JOHN CLINTON, *Recorder.*"

G. W. Norton became the holder and owner for value be-
28 fore maturity, and without notice of any infirmity in said bonds other than that given him on the face of the bonds and by the constitution and laws of Tennessee, of the interest coupons which matured July 1, 1874, taken from said bonds numbered 5, 7, 27, and 41, and the interest coupons which matured on July 1, 1883, 1884, 1885, and 1886, taken from said bonds numbered 27, 35, 41, 44, 62, 82, 83, 84, 85, 86, 48, 49, 55, 57, 58, 60, 90, 91, 95, 96, 97, 98, 99, and 100, being four coupons which matured July 1, 1874, for $40 each, and 24 coupons which matured July 1, 1883, and 24 which matured July 1, 1884, and 24 which matured July 1, 1885, and 24 which matured July 1, 1886, aggregating 100 coupons, of $40 each, and upon these 100 interest coupons the said G. W. Norton, on the 20th of May, 1887, instituted his said suit against the Board of Commissioners of the Taxing District of the City of Brownsville in said

circuit court of the United States for the western district of Tennessee, being No. 2933 on the law docket of said court, which is the cause recited in the caption hereof, to be submitted to said court upon the pleadings and this agreement of facts.

The mayor and aldermen of the city of Brownsville, at a meeting of said board held on March 18, 1871, took action, which is thus shown on the minutes of said board:

29 "On motion, the following ordinance was made and adopted:

"Be it ordained by the board of mayor and aldermen of the city of Brownsville, Tenn., That the Exchange Bank of St. Louis, in the State of Missouri, is hereby constituted and made the agency of the corporation of the said city of Brownsville, Tenn., for the purpose of paying the principal and interest, as the same shall become due, of fifty thousand of eight per cent. bonds issued by said corporation of Brownsville on the first day of July, 1870, and falling due on the first day of July, 1890; and the mayor is hereby authorised and instructed to collect promptly the taxes levied for the purpose of paying the interest on said bonds and for the purpose of establishing a sinking fund for the redemption of the same, and to place on deposit at the said Exchange Bank of the City of St. Louis by the 1st day of July of each and every year a sufficient amount in currency to redeem all of the coupons of said bonds falling due at that time and not otherwise redeemed."

The city of Brownsville paid the interest on said bonds for the years 1871 and 1872 and has paid the interest on some of them, matured since, for the years 1873, 1874, 1875, 1876, and 1877, but the coupons sued on as aforesaid by G. W. Norton in the case cited in the caption hereof have not been paid.

30 It is admitted that at an election for mayor of Brownsville on January 7, 1871, there were 546 votes cast for mayor, and that on June 11, 1870 the citizens of Brownsville entitled to vote in the election held on that day were at least 546 in number. It is also admitted that the Brownsville and Ohio railroad was never built and has been abandoned.

It is also admitted that by an act of 1879 the charter of the city of Brownsville was repealed, and that a government was afterwards organised under the act of April 1, 1881. All of these acts and others thought applicable may be read from the books containing the acts of Tennessee.

It is also admitted that there was no subscription by the authorities of Brownsville to the Brownsville and Ohio railroad or to the corporation which preceded it, called the Brownsville and Dyer County railroad, otherwise than is shown in the paper immediately following this agreement, before the passage of the act of February 8, 1870; and it is also admitted that no election was held as contemplated in the ordinance set out in said paper.

Paper Annexed to Agreement.

BROWNSVILLE, TENN., *May* 11, 1869.

At a call- meeting of the board of mayor and aldermen, held

31 in the mayor's office, members were all present except Recorder Clinton. The board was called to order and Alderman B. J. Lea appointed recorder *pro tem.* The minutes of the last meeting were read and adopted. A communication was received from Messrs. R. S. Thomas (chairman), J. P. Wood, Jno. R. Watkins, J. M. Rutledge, W. W. Vaughn, D. A. Nunn, and J. P. Parker, praying the board to order an election to vote a tax on the property in the corporation for the purpose of aiding in building the Brownsville & Dyer County railroad, which was received and ordered to be filed; and, on motion, the following ordinance was passed:

Be it ordained by the board of mayor & aldermen, That the proposition for the board of mayor and aldermen to levy a tax of one per cent. per annum for five years on the taxable property of Brownsville to aid in the construction of the Brownsville & Dyer County railroad, for which said tax the said railroad company is, after the last payment, to issue certificate of stock for the amount which is paid by the town of Brownsville, be submitted to the legal voters of Brownsville on the 18th day of May, 1869. Those in favor of said appropriation will vote "For railroad tax;" those opposed to said appropriation will vote "Against railroad tax."

This was all the evidence in the case. Thereupon the court
32 directed the jury to return a verdict for the defendants and against the plaintiff; to which the plaintiff then and there excepted and had his exception noted and made a part of the record.

1. The plaintiff, by his attorneys, then asked the court to instruct the jury as follows: That the act of February 8, 1870, under which the bonds were issued from which the coupons sued on were clipped, authorized and empowered the municipal corporation of the town of Brownsville to issue said bonds and deliver them to the Brownsville and Ohio Railroad Company in payment of stock subscribed to said railroad company upon an election being first held at which a majority of the qualified voters of said municipal corporation cast at said election should authorize the same, and that the new constitution, which went into effect on the 6th of May, 1870, *which* prohibited the issuance of bonds by municipal corporations for aid of railroads unless upon an election being first held in which three-fourths of the votes cast at such election should be in favor of issuing such bonds instead of a mere majority, as required by said act. If, therefore, the jury believe from the evidence that the mayor and aldermen of the town of Brownsville authorized an election to be held under the act of February 8, 1870, in which those who
33 were in favor of issuing the bonds in question were to put on their ballots "for bonds" and those opposed "no bonds," and that such election was held and 139 votes were polled at said election, all of which were "for bonds" and none for "no bonds," and that the bonds in question were issued by authority of this election, then the bonds are valid; and if the jury further believe that the plaintiff became the holder and owner of the coupons sued on and the bonds from which they were clipped for value, in due course of trade, before their maturity, without notice of any infirmity in the

same, they will then find for the plaintiff the principal of the coupons sued on and interest at 6 per cent. per annum from the maturity of the said coupons, respectively.

2. That the court instructs the jury to return a verdict for the plaintiff for the principal of the coupons sued on and interest on same at 6 per cent. per annum from their maturity, respectively.

The court refused said instructions, and, in the action of the court in refusing to give each of said instructions, plaintiff then and there excepted.

The court then instructed the jury that the bonds from which the coupons sued on were clipped were issued without the au-
34 thority of law and were void; that the new constitution, which went into effect on the 6th day of May, 1870, did not amend but repealed and abrogated the act of February 8, 1870, so far as said act authorized the issuing of bonds by municipal corporations upon an election held after said new constitution went into effect, and directed the jury to return a verdict for the defendants and against the plaintiff; and to the giving of this instruction plaintiff then and there excepted. The jury returned into court a verdict for the defendants under this charge of the court.

Plaintiff then moved in arrest of judgment and for a new trial, which motions were overruled; to all which holdings and rulings the plaintiff excepted and tendered this his bill of exceptions and prayed the court that the same be signed, sealed, and made a part of the record, which is accordingly done.

Memphis, Tennessee, June 14, 1888.

E. S. HAMMOND, *Judge.* [SEAL.]

35 Circuit Court, W. D. Tennessee. June, 1888. At Law.

NORTON *v.* TAXING DISTRICT OF BROWNSVILLE.

On motion for new trial.

1. Municipal corporations, bonds, authority to issue, statutes, repeal by constitution.—An act authorizing a municipality to issue bonds upon a majority vote of the qualified electors is abrogated by the new constitution of Tennessee of 1870, taking effect before the election is held and the bonds are issued and requiring a three-fourths vote to pledge the credit of the municipality, although at the election the new requirement as to the vote be complied with in fact. So held by the former circuit judge, the district judge *dubitante.*
2. *Stare decisis,* practice in Federal circuit courts.—If municipal bonds be declared invalid by the judgment of one of the judges holding the circuit court and the case be pending on writ of error in the Supreme Court, in a subsequent suit involving the same bonds, tried by one of the other judges holding the court, the former judgment should be followed, notwithstanding any difference of opinion as to the validity of the bonds, until the Supreme Court has passed upon the questions involved by the controversy.

Suit upon coupons of bonds in aid of a railroad corporation, issued by the defendant in pursuance of an act of the Legislature of February 8, 1870, c. 55, upon an election held June 13, 1870, under
36 an ordinance of the municipality passed May 12, 1870, the bonds reciting that they were issued in conformity with that act, the vote for the bonds being unanimous. The date of the bonds was July 1, 1870; but, on the 5th day of May, 1870, the new constitution of Tennessee took effect before the new election was ordered or held and before the bonds were issued, and by that instrument it was declared that "the credit of no county, city, or town shall be given or loaned to or in aid of any person, company, association, or corporation, except upon an election to be first held by the qualified voters of such county, city, or town and the assent of three-fourths of the votes cast at said election." Const. Tenn. 1870, art. 2, § 29. The late Circuit Judge Baxter, in a suit between these same parties upon other coupons of the same bonds, declared the bonds invalid and directed judgment for the defendant upon the ground that the new constitution abrogates the old act of the Legislature entirely, and that there was no legislative authority whatever for the bonds. Before the new constitution only a majority of the votes cast was required to authorize bonds to be issued. The court directed a verdict and judgment for the defendant.

Craft & Cooper, for plaintiff.

Smith & Collier and Bond & Rutledge, for defendant.

HAMMOND, *J.* (after stating the facts as above):

This case, by agreement, was heard with another for convenience and upon the agreed statement of facts filed in the record. The motion for a new trial involves only the same questions raised at the trial, and proceeds upon the ground that the court erred in directing a verdict for the defendant upon the law of the case. I do not deem it necessary to consider the merits of the controversy involved in the case at any length, for the reason that, following a former decision of this court in a suit involving the same bonds or the coupons upon them, it seems to me that the same judgment must result here; and, as that case is pending in the Supreme Court, to which this may be likewise taken and heard along with it, there seems to be no good cause for any further expression of opinion in this court upon these questions; but, at the request of counsel on both sides, it is proper to state that there was in that case no written opinion by the late Circuit Judge Baxter, who heard it sitting alone. He consulted me, however, about the questions presented, and died, pending the motion for a new trial there made, after having reached a determination to direct a verdict for the defendant and requesting me to have that order entered as he passed through to the Hot Springs, where his death took place before his return to Memphis. The duty of directing a verdict before another jury and of signing the bill of exceptions was devolved on me, and in this way I became familiar with the disposition of that case and fully informed as to his opinion concerning it. It is that opinion I am endeavoring to follow and enforce in this case, notwithstanding any judgment of

my own which might be reached by an independent consideration of the questions argued on this trial. Manifestly this is the
37 wisest course and that which proper judicial treatment requires under the circumstances, particularly as the self-same issues of bonds are involved in all the cases, and that which he decided is yet pending in the appellate tribunal. Diverse judgments should be avoided, if possible, under such circumstances always.

But it is contended that this case presents a somewhat different state of facts and demands a different judgment, and that it would be proper for the court as now constituted to proceed independently of that precedent to another judgment, if this case requires it. The only additional facts were considered by him as I know; and while technically, perhaps, there is that difference suggested it was about those very facts that there was some divergence of opinion or a tendency to that between us upon the law of the case as then presented, and it was only because of the needlessness of these very facts that he concluded that it was not worth while to reopen the case. It will be remembered that as tried before him there was, owing to the absence of counsel, a verdict for the plaintiff in that case, with an agreement of counsel that the case was to be argued on motion for a new trial, and, if he came to the conclusion that the bonds were invalid, he was to direct a verdict for the defendant, which he did, but died before the entries could be made. The plaintiff's counsel then desired a new trial to present these additional facts in the record, and, knowing that the circuit judge had considered them upon the argument as immaterial and irrelevant, I did not feel authorized to grant a new trial because of these facts, particularly as the plaintiff might have presented them originally if he had deemed them material and thereby invoked a ruling upon that point. So here I follow the ruling of the circuit judge in that case, and direct a verdict in this as he would have done if it were tried before him.

Perhaps I should explain that these additional facts are that the election upon which the bonds were issued was in point of fact a compliance with the new constitution of the State, and that the proposition to issue the bonds received the majority required by that instrument and not the less majority only which had been required by the authorization act of the Legislature. Now, before the circuit judge, he was asked to imply that fact and he did, or, at least, he concluded that it was wholly immaterial, since it was his opinion that the new constitution had the effect to abrogate the original authorization act in toto, so that the city of Brownsville no longer had any authority to issue these bonds, and that it would require a new act of the Legislature conferring the authority in conformity to and upon compliance with the new conditions established by the constitution of 1870. He thought, therefore, that the fact of the election having resulted in a majority sufficiently large under the new constitution would not avail the plaintiff in the least. I suggested to him that the actual fact did not appear by that record and should not, possibly, be implied upon the face of the bonds, from the bare fact that the election had been held subsequently to the adoption of the new constitution, as it was contended by plaintiff should be im-

plied; that it was a fact that might be either way, and that the implications might be evenly balanced, whether the authorities proceeded on the authority of the original act to issue bonds
38 upon a mere majority of the votes cast at the election or upon the theory of the new constitution not to issue them unless there was a majority of three-fourths, as required by that instrument; that, possibly, the law should be held to be that the new constitution only modified the act of authority to issue the bonds, and supplemented that legislative grant of power with a new condition which, if complied with, would make the issue of bonds as valid as if the original act had so required or as if any new act had incorporated that new condition; and, further, that I was inclined to that opinion. Green *v.* Dyersburg, 2 Flip., 477; Norton *v.* Town of Dyersburg, 127 U. S., 163, 8 Sup. C't Rep., 1111; Norton *v.* Shelby County, 118 U. S., 425, 6 Sup. C't Rep., 1121. The circuit judge took a different view, and asked me to set aside the verdict for the plaintiff and to direct one for the defendant, which, owing to delays of counsel, was not done till after his death, and, knowing my inclination as above stated, the plaintiff's counsel sought on motion for a new trial before me to obtain a different result by reopening the case and upon another trial proving the fact now proved in this case, that there was in fact a three-fourths majority; but I thought that justice required that the parties should be held to their agreement before the circuit judge, and that, he being dead, it was more particularly important that the defendant should have the judgment he had rendered in the case as the parties had made it before him, and, for the same reason, I have disregarded here any inclination of my own, and do not take the trouble to determine how far that inclination would lead towards a different view from that of the late circuit judge, it being my judgment that the bonds should stand as he left them, so far as this court is concerned, his judgment on the first case to be taken as the precedent for these cases. No injustice is done, as the parties by writ of error may invoke the judgment of the Supreme Court and thereby settle the law of the case for each and all the bonds alike; but the parties have the right, no doubt, that this court shall declare the basis of this ruling.

Motion overruled.

39 *Writ of Error Bond. Filed June* 14, 1888.

In the Circuit Court of the United States within and for the Western District Tennessee.

G. W. NORTON, Plaintiff,

vs.

BOARD OF COMMISSIONERS OF THE TAXING DISTRICT OF THE CITY OF BROWNSVILLE, TENN.

Know all men by these presents that we, G. W. Norton, as principal, and L. P. Cooper, as surety, are held and firmly bound unto the said Board of Commissioners of the Taxing District of the City

of Brownsville in the sum of five hundred dollars, to be paid to the said G. W. Norton; to which payment, well and truly to be made, we and each of us bind ourselves, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with seals, signed, and dated this 14th day of June, A. D. 1888.

Whereas the above-named G. W. Norton has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the western district of Tennessee:

Now, therefore, the consideration of this obligation is such that if the above-named G. W. Norton shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise remain in full force and virtue.

G. W. NORTON, [SEAL.]
By CRAFT & COOPER, *Att'ys.* [SEAL.]
L. P. COOPER. [SEAL.]

Acknowledged before me this 14 day of June, 1888.
JOHN B. CLOUGH, *Clerk.*

This bond is hereby approved on the date of its said acknowledgement before the clerk.

E. S. HAMMOND, *Judge.*

40 United States of America to the Board of Commissioners of the Taxing District of the City of Brownsville, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October, 1888, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the — circuit and western district of Tennessee, wherein G. W. Norton is plaintiff and you are defendant in error, to show cause, if there be any, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable E. S. Hammond, judge of the district court of the United States for the western district of Tennessee, this 14th day of June, 1888.

E. S. HAMMOND, *Judge.*

40*a* [Endorsed:] No. 2933. Circuit court of the United States, western district of Tennessee. G. W. Norton *vs.* The Board of Comm'rs of the Taxing District of the City of Brownsville. Citation. Filed the 14 day of June, A. D. 1888. J. B. Clough, clerk.

At Brownsville, Tenn., on the 23d day of June, 1888, I served this citation on The Commissioners of the Taxing District of the City of Brownsville by reading the same to Henry C. Nolen, president;

Jno. R. Head, secretary, & William Thomas, treasurer, of said board of commissioners.

T. B. YANCEY,
U. S. Marshal,
By C. S. TALIAFERRO, *Dep.*

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41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the western district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said circuit court, before you, between G. W. Norton, plaintiff, and The Board of Commissioners of the Taxing District of the City of Brownsville, defendant, a manifest error hath happened, to the great damage of the said G. W. Norton, as by complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1888, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Samuel F. Miller, senior justice of the Supreme Court of the United States, and the seal of said circuit court, at Memphis, this 14th day of June, A. D. 1888, and 112th of American Independence.

{ Seal of the Circuit Court of the United States for the District of West Tennessee. }

J. B. CLOUGH, *Clerk.*

41*a* [Endorsed:] Wm. Thomas, treasurer. No. 2933. Circuit court of the United States, western district of Tennessee. G. W. Norton *vs.* The Board of Comm'rs of Taxing District of City of Brownsville, Tenn. Writ of error. Issued the 14 day of June, A. D. 1888. J. B. Clough, clerk.

At Brownsville, Tenn., on the 23d day of June, 1888, I served this writ of error on The Board of Commissioners of the Taxing District of the City of Brownsville by reading the same to Henry C. Nolen,

president; John R. Head, secretary, & William Thomas, treasurer, of said board of commissioners.

T. B. YANCEY,
U. S. Marshal,
By C. S. TALIAFERRO, *Dep.*

3 serv's, $6.00.

42 THE UNITED STATES OF AMERICA,
Sixth Judicial Circuit, Western District of Tennessee:

I, John B. Clough, clerk of the circuit court of the United States for said western district of Tennessee, do hereby certify that the papers hereto attached are a full, true, perfect, and correct copy of the entire record and proceedings in said court as the same now appear of record and upon the files in my office in the following cause, to wit:

G. W. Norton *vs.* The Board of Commissioners of the Taxing District of the City of Brownsville, No. 2933.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at office, in the city of Memphis, Tennessee, this 20th day of June, A. D. 1888, and of the Independence of the United States the 112th year.

{ Seal of the Circuit Court of the United States for the District of West Tennessee. }

JOHN B. CLOUGH, *Clerk.*

[Endorsed:] No. 2933. Circuit court of the United States, western district of Tennessee. G. W. Norton *vs.* The Board of Commissioners of the Taxing District of the City of Brownsville.

Endorsed on cover: W. Tennessee C. C. U. S. No. 1442. G. W. Norton, plaintiff in error, *vs.* The Board of Commissioners of the Taxing District of the City of Brownsville. Filed November 23, 1888.